



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 9, 1998

Mr. Monty Waters
Attorney
Office of General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-0649

Dear Mr. Waters:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 113462.

The Texas Department of Health (the "department") received two requests for information from the same requestor. On November 20, 1997, the department received a request for information pertaining to any outbreaks of idiopathic chronic diarrhea in Texas for the years 1994 - 1997. On December 17, 1997, the department received a request for the following information:

all communications concerning idiopathic chronic diarrhea, including e-mail between and among Brad Walsh, Akiko Kimura, Diane M. Simpson, Paul Mead, Jeff Taylor and Eric Mintz in 1996 and 1997 and all records relating to odds ratio analysis concerning idiopathic chronic diarrhea, including but not limited to data excluded from analysis, the reason for the exclusion, the data included, the reason for the inclusion, the reliability of the data, the source of the data and the credentials of the person who prepared the analysis.

We note initially that the Open Records Act imposes a duty on governmental bodies seeking an open records decision to submit the request for a decision to the attorney general within ten business days after the governmental body's receipt of the request for information. Gov't Code § 552.301. This time limitation is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made timely, the requested information is presumed to be public. See Gov't Code § 552.302. However, this presumption of openness can be overcome by a

compelling demonstration that the information should not be made public, such as by a showing that the information is made confidential by law. Open Records Decision No. 150 (1977). The department did not timely seek a decision from this office concerning the November 20, 1997 request, but you have made a compelling demonstration that the information at issue may not be released because it is confidential by law.

You submitted to this office for review responsive documents that you contend are protected from disclosure pursuant to section 81.046 of the Health and Safety Code, which provides, in part:

- (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter
- (b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

The submitted records are “reports, records, and information relating to” a communicable disease as defined in section 81.003 of the Health and Safety Code. Section 81.046 provides that these submitted records are generally confidential and may be disclosed only as provided under section 81.046(c) and (d).

You state that the department has previously, in similar cases, released de-identified records to the public. You ask if the department has the discretion to release to the public any portion of documents that are confidential under section 81.046. We note that section 81.046(c) provides that¹:

- (c) Medical or epidemiological information may be released:
 - (1) for statistical purposes if released in a manner that prevents the identification of any person;
 - (2) with the consent of each person identified in the information;
 - (3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to

¹Section 81.046(d) provides for release of information to certain entities when the information concerns a case of sexually transmitted disease in a child under 13 years of age. This exception is not applicable in this situation.

the control and treatment of communicable diseases and health conditions;

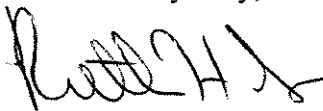
(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

The department may release information made confidential by section 81.046 only under the circumstances listed in section 81.046 (c) and (d). Since you indicate that none of the exceptions to confidentiality apply in this situation, we conclude that the submitted records must be withheld from disclosure in their entirety.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 113462

Enclosures: Documents

cc: Mr. William E. Hartsfield
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(w/o enclosures)

²Since the records at issue are confidential under section 81.046, we need not address your other arguments against disclosure.